



San Diego City Attorney **MICHAEL J. AGUIRRE**

NEWS RELEASE

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Contact: Maria Velasquez, Communications Director (619) 235-5725 mvelasquez@saniego.gov

CERTAIN CITY CONSULTANTS AND OUTSIDE COUNSEL MUST DISCLOSE THEIR FINANCIAL INTERESTS

San Diego, CA: The first comprehensive review in more than two decades of how the City complies with its Conflict of Interests Codes has been completed by the City Attorney's Office. Today City Attorney Michael Aguirre announced that his office has issued three separate legal opinions related to whether or not consultants must disclose their financial interests by filing Statement of Economic Interests Forms (Form 700) [SEI] with the Office of the City Clerk.

“These legal opinions are directed at certain consultants hired by the City who are involved in making or participating in the making of a decision in a staff capacity,” said City Attorney Aguirre. “They have an obligation to inform the public of their financial interests for the purpose of ensuring that they are performing their duties in an impartial manner.”

The City of San Diego retains many professional consultants each year, such as architects, engineers, lobbyists, attorneys, and auditors. Under the California Political Reform Act [PRA] and the City of San Diego's Conflict of Interests Codes, a determination must be made at the time of hiring as to whether the level of services provided by individual consultants require disclosure of their financial interests.

The first Memorandum of Law (MOL) provides an overview of the applicable laws and recommendations to assist City department officials in making the determination as to whether a consultant must disclose his or her economic interests by filing an SEI form. In most cases, City consultants will not be required to disclose because they are hired for a limited scope and purpose, or their recommendations are subject to significant substantive review. However, consultants that are acting in a staff capacity or making governmental decisions are required to disclose certain economic interests.

The second MOL concludes that to ensure transparency and identify possible conflicts of interests, outside attorneys hired to advise individual council members in connection with pension litigation or investigations by the Securities and Exchange Commission, FBI, or U.S. Attorney's Office should file statements with the City disclosing their financial interests:

“Our Office has not reviewed the retainer agreements or detailed invoices because the council members have claimed that these are confidential communications protected by the attorney-client privilege. Due to

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the broad access described above, these attorneys may be providing council members with general legal advice, opinions and/or guidance beyond the limited scope of work for which they were authorized by the City Council: to represent the individual council member in connection with the ongoing financial investigations and the pension litigation. Accordingly, these attorneys may have exerted influence over government decisions and council members' votes, leading our office to conclude that those attorneys should disclose their financial interests."

The final MOL concludes that the three consultants (Vinson & Elkins, Kroll, Inc., and Willkie Farr & Gallagher) hired to investigate the City's financial disclosure practices in connection with federal investigations should file SEI's based upon their direct level of involvement in making recommendations to the Mayor and City Council regarding governmental decisions affecting the City's financial policies, standards, and guidelines.

In 2004 and 2005, the City retained consultants as a result of the investigation by the Securities & Exchange Commission, U.S. Attorney's Office and the FBI into the City's financial disclosure practices and related issues. In particular, the City first hired the law firm of Vinson & Elkins, and later retained Kroll, a risk assessment firm, along with the law firm of Willkie Farr & Gallagher.

According to City Attorney Aguirre it does not appear that a written determination was ever made by any City official as to whether these consultants met the definition of a "consultant" and, therefore, were required to file financial disclosure statements.

To view the MOL's please visit the City Attorney's website at www.sandiegocityattorney.org , Civil Division, "Memorandum of Law."

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